

17 VIDEO-RECORDED DEPOSITION OF RICHARD R. FRANK
18 TAKEN ON BEHALF OF THE DEFENDANT GREEN
19 MARCH 10, 2022

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1 A Yes, she did.

2 Q **Okay. Do you know if she's currently**
3 **employed with the City of St. Louis?**

4 A No, she retired shortly after I did.

5 Q **Okay. All right. Let's talk about**
6 **forced leave. Are you familiar with the process of**
7 **forced leave in the City of St. Louis?**

8 A Yes.

9 Q **Okay. What is forced leave?**

10 A Forced leave is defined in Department
11 of Personnel Administrative Regulation 117. Forced
12 leave can be requested by an appointing authority,
13 to be approved by me, when an employee presents a
14 potential danger to themselves, to the community,
15 to the workplace, et cetera.

16 Q **The forced leave process I believe**
17 **you just stated is governed by St. Louis City**
18 **Regulation 117?**

19 A Yes.

20 Q **Is forced leave considered**
21 **discipline?**

22 A No.

23 Q **Why do you say that?**

24 A It is not considered discipline
25 because an employee may use any accrued

1 compensatory time or vacation time for the period
2 of forced leave. If they elect not to take any
3 accrued leave during the period of forced leave and
4 it is found that discipline or dismissal is not
5 warranted, then they are entitled to back pay for
6 that period of time.

7 So it is not, in the eyes of the
8 Department of Personnel, property deprivation.

9 Q Okay. And one of the reasons you
10 identified as the use of forced leave is when an
11 employee could be a danger to the City. Is that
12 right?

13 A Yes.

14 Q And does that danger necessarily mean
15 physical danger or harm?

16 A No.

17 Q Okay. What are some other examples
18 of the type of danger to the City that might
19 warrant a forced leave?

20 A It could be use of -- misuse of the
21 City computer system for political reasons. It
22 could be if they have access to confidential
23 information that could be compromised. It could be
24 also used for investigative purposes. So an
25 employment authority would ask to place an employee

1 where an individual was placed on forced leave
2 pending an investigation and then ultimately the
3 veil was lifted where that individual was permitted
4 to return to work?

5 A Yes.

6 Q Okay. When an individual is placed
7 on forced leave, are there appeals processes that
8 can be utilized --

9 A Yes.

10 Q -- by that -- by that employee?

11 A Yes.

12 Q Okay. And --and as the secretary for
13 the Civil Service Commission, were you involved in
14 those appeals?

15 A Yes.

16 Q All right. Tell us about that
17 process, particularly as it relates to forced
18 leave. The appeals process as related to forced
19 leave.

20 MR. BLANKE: Let me just object just
21 to the form of the question calling for an unduly
22 long narrative response.

23 Q (BY MR. NORWOOD) Okay. And without
24 having an unduly long narrative response, could you
25 tell us about those processes?

1 A If I received a request to appeal a
2 forced leave, I would call in the administrative
3 assistant to the Civil Service Commission, give it
4 to her, if it were timely, which is within ten days
5 of the notice of forced leave, and then ask him or
6 her to schedule an appeal in front of a hearing
7 officer.

8 Q **Okay. And in that context, the**
9 **appeal of a forced leave, do you have an**
10 **understanding as to what is being looked at by the**
11 **hearing officer?**

12 A Yes.

13 Q **What is that that would be looked at**
14 **by a hearing officer in that forced leave appeal**
15 **context?**

16 A The hearing officer would examine
17 whether or not there appeared to be sufficient
18 justification to place the employee on forced leave
19 and that was not being done for malicious reasons.

20 Q **Okay. When a person is placed on**
21 **forced leave, what happens with respect to that**
22 **individual remaining on the work site?**

23 A If a person is placed on forced
24 leave, they are notified that they should not
25 return to the work site.

1 A It could take -- it varies greatly.
2 It could take from a few days, if it were like a
3 blood alcohol test, to sometimes several years if
4 it were a matter that were in the police division,
5 being investigated by the internal affairs division
6 which involve criminal charges. So it did vary
7 widely.

8 Q **Okay. Have there -- when you were**
9 **director of personnel, were there situations,**
10 **occasions, where a forced leave would be rescinded**
11 **and then reinstated?**

12 A Yes.

13 Q **Was there anything out of the**
14 **ordinary about that process while you were director**
15 **of personnel?**

16 A It's unusual, but it did occur when
17 more information was forthcoming that necessitated
18 another -- a further investigation.

19 Q **Okay. So if I'm understanding your**
20 **prior testimony, where, for instance, you said**
21 **sometimes it could take years, as part of an**
22 **investigation, as information comes in, does it**
23 **continue to get extended?**

24 A Yes.

25 Q **Why?**

1 A Because again, once you get into an
2 investigation, you can find additional matters of
3 concern. Additional allegations can surface.

4 Q **Okay. If additional information**
5 **comes to light, in your experience as director of**
6 **personnel, is it prudent to ignore that additional**
7 **information as it comes in?**

8 A No.

9 Q **Why not?**

10 A Because all of that should be taken
11 into consideration when making the ultimate
12 determination as to whether or not the employee
13 should be set for a pre-disciplinary review or a
14 pre-termination review.

15 Q **Okay. And you identified situations**
16 **where there was a forced leave, there was an**
17 **investigation, and ultimately the individual**
18 **returned to work. Is that right?**

19 A Yes.

20 Q **And would that be -- well, strike**
21 **that.**

22 **Under what circumstances would, once**
23 **that process works, would an individual be returned**
24 **to work? Give us examples of how that operates.**

25 A We had a situation, for instance,

1 where an employee was accused of -- of workplace
2 violence, and it was invest -- and so he was placed
3 on forced leave.

4 And then upon further review, he was
5 allowed to return because they did not -- the
6 appointing authority did not believe that the
7 threat was truly physical harm.

8 But then the employee, upon returning
9 to work, made a very viable threat and made
10 physical contact with a supervisor, so he was
11 placed on forced leave again.

12 We've had situations in the police
13 division where the person was placed on forced
14 leave due to a complaint through perhaps the -- a
15 Civilian Oversight Board or through a, you know, a
16 member of the public, and while the particular
17 charge or allegation was found not meritorious, the
18 internal affairs division uncovered other
19 circumstances during its investigation that
20 warranted forced leave again.

21 **Q Okay. So if I'm understanding you,**
22 **if there was an investigation and it turns out**
23 **that, you know, there's not a basis for the next**
24 **step, which could be discipline, what happens then**
25 **to that employee?**

1 A The person would be returned to work
2 if there was no basis for it.

3 Q **And what about any utilization of --**
4 **of time?**

5 A Yes, sir. As I addressed previously,
6 if they elected to take any accrued compensatory
7 time or vacation leave, then they've already been
8 paid, you know, for that time. And if the period
9 of forced leave were greater than what they had,
10 they would be restored the difference.

11 As an example, if they had only two
12 weeks of time and the forced leave were for three
13 weeks and they were found not to be at fault, they
14 would get the one week time difference.

15 If they elected not to take any time
16 during this period of forced leave for that three
17 weeks, they would get paid for the entire three
18 weeks.

19 Q **Okay. All right. Now, what about**
20 **appeals processes? Are you aware of situations**
21 **where an individual was placed on forced leave and**
22 **appealed and ultimately the forced leave was**
23 **rescinded?**

24 A Yes.

25 Q **And what happens to the employee in**

1 **that circumstance?**

2 A They are paid for the period that
3 they were off on forced leave.

4 Q **And what about them returning to
5 work?**

6 A They would return to work, you know,
7 upon the expiration -- or the rescission of the
8 forced leave.

9 Q **Okay. If an individual is ultimately
10 disciplined, and we're going to talk a little bit
11 more about the discipline in that process, are you
12 aware of situations where that disciplined employee
13 appealed that discipline?**

14 A Yes.

15 Q **And if that employee is successful in
16 that appeal, what happens to the employee?**

17 A That depends on the decision of the
18 Civil Service Commission. They can totally
19 overturn the discipline, in which case the employee
20 is made whole in terms of any lost pay and
21 seniority, et cetera, or the Commission retains the
22 right to reduce the discipline if they feel that
23 there, you know, were -- there were some fault on
24 the part of the employee but that the discipline
25 imposed by the appointing authority was excessive.

1 Q Okay. So -- so it sounds like the
2 Commission, then, serves as sort of a watchdog to
3 make sure that, if there's discipline of a civil
4 service employee, that it -- it's justified, and,
5 therefore, can effectively remove any discipline
6 and send that employee back to work. Is that
7 right?

8 A Yes.

9 Q And restore any lost benefits?

10 A Yes.

11 Q Is it your understanding that an
12 appointing authority needs proof that an individual
13 engaged in misconduct before an individual is
14 placed on forced leave?

15 A No.

16 Q You identify forced leave as a way to
17 remove an employee from the workplace while an
18 investigation is going on. Why is it important to
19 remove an employee from the workplace while the
20 investigation is going on?

21 A Because --

22 MR. BLANKE: Objection, asked and
23 answered.

24 MS. HAMILTON: You can answer.

25 A Because if the allegations are so

1 A Pre-termination is a process whereby
2 an employee is officially put on notice via letter
3 that the City -- the appointing authority
4 specifically is contemplating the need to dismiss
5 them from their job.

6 Q **Okay.**

7 A It's -- it's outlined in
8 Administrative Regulation 117 in -- in terms of how
9 that procedure works and what the necessary
10 elements are.

11 Q **Does -- well, once a pre-termination
12 notice is sent, does that process lead to
13 termination?**

14 A It leads to a pre-termination review,
15 which is not a formal hearing, but it is a review
16 where the employee and his or her representative
17 can review the evidence and also respond to any of
18 the allegations and basically fulfill the elements
19 that are required under Administrative Regulation
20 117.

21 Q **Okay. And are you aware of
22 situations where that process has occurred and the
23 -- and no discipline was issued?**

24 A Yes.

25 Q **And if that happens, what happens**

1 **with respect to the employee returning to work and**
2 **restoration of any benefits?**

3 A Again, typically, if a person is
4 placed on -- if they are notified that they are
5 being placed on -- I'm sorry, if they are being set
6 for a pre-termination review, the appointing
7 authority would consult with myself and possibly
8 the law department, and in most cases those people
9 would be placed on forced leave because the
10 employee is put on notice that they may be losing
11 their job.

12 So in most instances the employee
13 would be placed on forced leave and then again that
14 process that we discussed would trigger where they
15 could either elect to take time that they have
16 accrued, or not.

17 Q **And if that happens, though, and it's**
18 **ultimately determined that, based on those**
19 **incidents you identified, that there was no basis**
20 **for discipline, what happens to that employee in**
21 **terms of returning to work and restoration of**
22 **benefits?**

23 A Then the employee is returned to work
24 as -- as quickly as possible, and the employee, if,
25 again, if they took any time, if the period of

1 forced leave were greater than the amount of time
2 they were on forced leave, they would be paid the
3 difference.

4 If they were not, if they choose not
5 to take any time, they get paid for that -- that
6 period of forced leave and, you know, any seniority
7 or any holidays, you know, they're made whole
8 essentially under -- under our rules.

9 **Q But during the forced leave period of**
10 **time and during the pre-termination period of time,**
11 **essentially they are on paid leave. Is that right?**

12 MR. BLANKE: Objection, leading.

13 **Q (BY MR. NORWOOD) Well, are they on**
14 **paid leave in that circumstance?**

15 A It can be either paid or on -- on
16 leave without pay.

17 **Q Okay. All right. Once a**
18 **pre-termination -- is it a pre-termination hearing;**
19 **is that what it's called?**

20 A We call it a pre-termination review.

21 **Q Okay. Once a pre-termination review**
22 **happens, and if there is a determination of a need**
23 **to impose some form of discipline, can the employee**
24 **appeal that determination to the Civil Service**
25 **Commission?**

1 discipline following the pre-termination review,
2 there was an appeal to the Civil Service
3 Commission, and the Civil Service Commission
4 determined that the discipline was improper, and
5 the individual was returned to work?

6 A Yes.

7 Q Is it fair to say that this whole
8 Civil Service Commission process is a safeguard to
9 avoid a situation where a civil service employee is
10 wrongfully charged?

11 A Yes.

12 Q Okay. Let's talk about
13 Mr. Garavaglia's forced leave situation. Did you
14 have any involvement in that forced leave process?

15 A Yes.

16 Q Tell us about your involvement in
17 that process as it relates to Mr. Garavaglia.

18 MR. BLANKE: Objection. Calls for an
19 unduly long narrative response.

20 Q (BY MR. NORWOOD) Subject to that
21 sir, and unless --

22 MS. HAMILTON: You can answer.

23 A I received a phone call on a Saturday
24 -- Saturday afternoon from the appointing authority
25 designate -- for the Comptroller, Judy Armstrong,

1 advising that the Deputy Comptroller, Garavaglia,
2 was -- they were concerned that he was involved in
3 some serious fiscal issues and was not complying
4 with the Comptroller's office's protocols, and that
5 they were so serious as to warrant a
6 pre-termination review.

7 **Q (BY MR. NORWOOD) All right. And**
8 **that was by way of a phone call?**

9 A Yes, sir.

10 **Q Do you recall when that phone call**
11 **occurred?**

12 A I don't remember the exact month. I
13 know it was a Saturday afternoon at approximately
14 1:30 PM.

15 **Q All right. Is it common for you to**
16 **receive an oral request for forced leave?**

17 A Yes.

18 **Q And when you receive an oral request**
19 **for forced leave, do you -- if you agree, does it**
20 **happen at that point in time, once you have**
21 **approved it orally?**

22 A It still has to be ratified by me via
23 the 72 hour written notification. So the
24 appointing authority may call me or, again, like
25 the law department, to discuss a particular matter

1 A This is a request from Comptroller
2 Green dated July 18, asking that I place
3 Mr. Garavaglia -- or approve Mr. Garavaglia's
4 forced leave for serious fiscal improprieties.

5 **Q Okay. Did you ultimately approve**
6 **that request?**

7 A Yes, I did.

8 **Q All right. Let's turn to the next**
9 **tab, Frank Depo Exhibit 6. What is that document?**

10 A This is a copy of my approval of the
11 request for a forced leave for Mr. Garavaglia dated
12 July 18, 2019.

13 **Q Okay. And there is some writing on**
14 **that document; is that correct?**

15 A Yes.

16 **Q And whose writing is that?**

17 A That is mine.

18 **Q And for the record, could you read**
19 **what you wrote on July 18, 2019?**

20 A "Approved RF 7/18/19."

21 **Q All right. And why did you approve**
22 **this request for forced leave?**

23 A I approved this request for
24 essentially the same reasons, which were the
25 allegations made by Comptroller that -- and that

1 they were -- they were investigating serious fiscal
2 improprieties and some issues of -- related to that
3 from Mr. Garavaglia.

4 **Q Okay. And would an investigation**
5 **into serious fiscal improprieties justify a forced**
6 **leave?**

7 A Yes.

8 **Q For the reasons you've already**
9 **stated?**

10 A Yes.

11 **Q Does it become more important when**
12 **you have an individual who is a high level employee**
13 **of the City?**

14 A Yes.

15 **Q Why?**

16 A Because of the magnitude of their
17 decisions. They have a greater impact to
18 decision-making, and they also have, typically,
19 involvement in contracts and with vendors and the
20 magnitude of their authority is greater. So it's
21 amplified.

22 **Q What about their supervisory**
23 **authority?**

24 A That's certainly another issue, they
25 -- being as high as Mr. Garavaglia was, he had, you

1 a-n, including termination.

2 Is that a fair reading of what's I
3 -- what's in the communication?

4 A Yes.

5 Q And is that consistent with your
6 assessment of the reason why you approved the
7 second forced leave and the first forced leave in
8 the first place?

9 A Yes.

10 Q Okay. Now, let's go to Frank
11 Deposition Exhibit 9. What is Frank Deposition
12 Exhibit 9?

13 A This is a letter from Comptroller
14 stating that she would like to officially withdraw
15 her request for forced leave for Mr. Garavaglia.

16 Q And it's dated August 28, 2019. Is
17 that correct?

18 A Yes.

19 Q And it looks like Mr. Garavaglia,
20 Judy Armstrong, Nancy Kistler were also copied on
21 this letter from Comptroller Darlene Green. Is
22 that right?

23 A Yes.

24 Q All right. Let's go to the next
25 item, number 10. And what is this item number 10?

1 A This is a letter from Comptroller
2 notifying Mr. Garavaglia that he is being set for a
3 pre-termination review.

4 Q Okay. And --

5 A It says "hearing," pardon me, but
6 actually it's a review.

7 Q **Is the -- the nomenclature is review**
8 **as opposed to hearing; correct?**

9 A Yes.

10 Q **And it's dated August 28, 2019. Is**
11 **that correct?**

12 A Yes.

13 Q Now, it lists a number of bases for
14 the pre-termination review. And the first one, let
15 me read that into the record because I have a few
16 questions to ask you about that.

17 It says, quote, (Quote as read):
18 You have improperly signed multiple
19 City contracts and contract
20 extensions, including automatic
21 extensions without legal
22 authorization to do so, putting the
23 City at risk, dating back to 2019.

24 Do you see that?

25 MS. HAMILTON: 2009.

1 Q **(BY MR. NORWOOD) I'm sorry, 2009.**

2 A Yes, I see that.

3 Q **Dating back to 2009; correct?**

4 A Yes.

5 Q **Now, if we unpack that, would the
6 improper signing of multiple City contracts and
7 contract extensions, would that be a grounds for
8 discipline?**

9 A Yes.

10 Q **Why?**

11 A That is a very serious charge under
12 both the -- the Code of Ethics and it would be an
13 exception to progressive discipline under
14 Administrative Regulation 117.

15 Q **Okay. Does it matter that the --
16 that any of the contracts that might be referenced
17 here date back to 2009?**

18 MR. BLANKE: Well, let me object to
19 the form of the question as to whether it matters,
20 that --

21 MR. NORWOOD: Well, let me say -- let
22 me withdraw that question, let me withdraw that
23 question, and let me ask it another way.

24 Q **(BY MR. NORWOOD) If an investigation
25 determines past improprieties, are those past**

1 **improprieties to be ignored in the context of that**
2 **investigation?**

3 A No.

4 Q **Why not?**

5 A Because they're still relevant to the
6 overall performance of the employee, you know, in
7 his or her position and whether or not they, um,
8 you know, are fit for continued service.

9 Q **Okay. And there are a listing of**
10 **other charges on that page. Is that correct?**

11 A Yes.

12 Q **The next page, there is a reference**
13 **to certain provisions of the City of St. Louis**
14 **Department of Personnel, Administrative and Joint**
15 **Regulations, Employee Code of Conduct; you see**
16 **that?**

17 A Yes.

18 Q **If we look at the next to last**
19 **paragraph, and I'll read that one into the record,**
20 **it says, quote, (Quote as read):**

21 **The purpose of this pre-termination**
22 **hearing is to allow you the**
23 **opportunity to respond to the**
24 **charges, review any evidence against**
25 **you, present any evidence you have on**

1 of the question regarding the use of the word
2 "would" rather than "should," whether it would or
3 not calls for speculation.

4 MS. HAMILTON: You can answer.

5 A Yes.

6 Q (BY MR. NORWOOD) All right. I want
7 to backtrack a bit, and I hate to jump around, but
8 let's take a look at tab 1. And while you're --
9 and it's marked Frank Deposition Exhibit 1. And
10 while folks are locating that tab, for the record,
11 that exhibit, Frank Depo Exhibit 1, is a document
12 entitled Second Amended Complaint for Employment
13 Discrimination filed by Mr. James Garavaglia
14 against the City of St. Louis and Darlene Green.

15 Do you see that document?

16 A Yes, I do.

17 Q All right. And let me direct your
18 attention to paragraph -- I'm sorry. Page 4. Do
19 you have that page, sir?

20 A I do.

21 Q Okay. And let me read some of the
22 language. Let's start at paragraph 16.

23 It says, quote, (Quote as read):

24 Defendant Green then withdrew

25 Plaintiff's forced leave yet again

1 for the same reasons as set forth
2 above, repeating this conduct for the
3 third separate occasion,
4 necessitating Plaintiff multiple --
5 I'm sorry, Plaintiff filing multiple
6 appeals to the Civil Service
7 Commission.

8 Do you see that?

9 A Yes.

10 Q And then paragraph number 17 says,
11 quote, (Quote as read) :

12 The City's director of personnel
13 approved the forced leave each time,
14 knowing that there was no supportable
15 basis for each forced leave decision
16 and/or conspired with Defendant Green
17 to discriminate against Plaintiff as
18 alleged herein.

19 Do you see that?

20 A I do.

21 Q All right. Did you approve -- let's
22 focus on the first forced leave. July 2, 2019.
23 Did you approve the July 2, 2019, forced leave
24 request with -- without any supportable basis?

25 A No, I did not.

1 Q Did you approve the July 2, 2019,
2 forced leave request because you were in some
3 conspiracy with Comptroller Green to discriminate
4 against Plaintiff?

5 MR. BLANKE: Let me object, calls for
6 legal conclusions on the part of the witness.

7 MS. HAMILTON: You can --

8 Q (BY MR. NORWOOD) Well, your
9 understanding of conspiracy. Were you huddling up
10 with Comptroller Green in an effort to discriminate
11 against Mr. Garavaglia based on race, sex, age?

12 A No.

13 MR. BLANKE: Same objection.

14 MR. NORWOOD: I'm sorry?

15 MR. BLANKE: Same objection.

16 MR. NORWOOD: And I just want to make
17 sure the witness --

18 MR. BLANKE: He said no.

19 MR. NORWOOD: Well, I to make sure
20 she got that.

21 THE WITNESS: I'll slow down.

22 MR. NORWOOD: You can say what he
23 said, but let's let him say it again.

24 Q (BY MR. NORWOOD) Could you answer
25 that one?

1 A No.

2 Q **What's your view of that allegation**
3 **directed to -- against you personally?**

4 MR. BLANKE: Objection as to
5 relevance.

6 MS. HAMILTON: You can answer.

7 A I only have -- first I had only one
8 conversation with Comptroller herself, as I said in
9 my original conversation with Judy Armstrong on the
10 Saturday before I approved the forced leave. I did
11 not speak with Comptroller. I only spoke to
12 Comptroller once and that was after this matter,
13 you know, had occurred about Mr. Garavaglia.

14 And secondly, in terms of conspiracy
15 to discriminate, I only met Mr. Garavaglia perhaps
16 once. So I had very, very little knowledge of him
17 other than he was a nice guy.

18 Q **(BY MR. NORWOOD) Well, and so did**
19 **you have any reason to conspire against him based**
20 **on his age or sex or race or anything like that?**

21 A No. I think we're sort of in the
22 same group there.

23 Q **Got it. And for the record, what**
24 **group is that?**

25 A I'm a white male who is 61 years of

1 age.

2 Q Okay. All right. Let's go to tab --
3 Exhibit tab 11, Frank Deposition Exhibit 11. Take
4 your time, if you could, just take a look at the
5 exhibit which, for the record, there are two pages,
6 and it's Bates stamped STL000707 on the first page,
7 and the second page is STL000708, for the record.

8 First of all, what is the first page
9 of Frank Depo Exhibit 11?

10 A This is a letter from Comptroller
11 Green asking me to give a -- to approve, pursuant
12 to the compensation ordinance, a non-standard
13 increase for Mr. Garavaglia upon his promotion to
14 Deputy Comptroller.

15 The compensation ordinance provides
16 that a person receive a 5 percent normally upon
17 promotion; although, the appointing authority can
18 ask for approval from the director of personnel to
19 grant a higher, non-standard promotional increase
20 in certain circumstances.

21 Q Okay. Let's unpack that, if we
22 could.

23 In the normal course, based upon what
24 you understood, him being promoted to deputy
25 Comptroller would have entitled him to a 5 percent

1 **salary increase from where he was being
2 compensated; is that right?**

3 A Yes. Or, with the proviso that he
4 would also go to the minimum of the range. So this
5 was not the case I believe here, but sometimes
6 there is such a large gap between pay ranges that
7 it might automatically result in a 7 percent, et
8 cetera.

9 **Q Right.**

10 A But -- but not -- not in this case to
11 the best of my recollection.

12 **Q Okay. So he would have been entitled
13 to a 5 percent salary increase; is that right?**

14 A Yes.

15 **Q And because of that, why -- well,
16 strike that.**

17 **So why would Comptroller Green have
18 to send this to you as it relates to his
19 compensation?**

20 MR. BLANKE: Objection, asked and
21 answered.

22 MS. HAMILTON: You can answer.

23 A In our system, the compensation
24 ordinance is the legal document that determines how
25 we pay all of our civil service employees, and even

1 excepted employees, and it gives discretion to the
2 director of personnel alone to approve non-standard
3 increases.

4 Q (BY MR. NORWOOD) Okay. And -- and
5 the non-standard, if I'm understanding you, and you
6 correct me if I'm wrong, the non-standard increases
7 would be the increases beyond the document that
8 you've identified; is that correct?

9 A Yes, sir.

10 Q All right. And do you know why
11 Comptroller Green requested a 5 percent salary
12 increase above what he would normally be entitled
13 to?

14 A My understanding was because he was
15 moving to such a high level --

16 MR. BLANKE: Objection, it's
17 non-responsive. The question was whether you know
18 why.

19 THE WITNESS: Whether I know why?

20 MR. NORWOOD: Well, and he was
21 answering whether he knew why.

22 MS. HAMILTON: You can -- you can
23 continue.

24 MR. BLANKE: I might object to that
25 one.

1 MS. HAMILTON: He's objecting. You
2 can continue.

3 A My understanding was that --

4 MR. BLANKE: Objection,
5 non-responsive. He's not us asking what your
6 understanding was.

7 MS. HAMILTON: Your objection is
8 noted, Counsel. You can answer.

9 MR. BLANKE: I understand. I just
10 wanted to object to it again.

11 A My understanding from -- from the
12 Comptroller's office was because he was moving to a
13 very high level position.

14 Q **(BY MR. NORWOOD)** Okay. And do you
15 know if she was required to add another 5 percent?

16 A No.

17 Q **Do you know why, if Comptroller Green
18 was discriminating against him based on his race or
19 sex or age, why she would recommend a 5 percent
20 increase over and above what he would normally be
21 entitled to?**

22 MR. BLANKE: Objection, not supported
23 by the evidence, and calls for speculation.

24 MS. HAMILTON: You can answer.

25 A No.

1 Q (BY MR. NORWOOD) Let's go to the
2 next page of Frank Deposition Exhibit 11. What is
3 that?

4 A This is a letter to Comptroller Green
5 from me saying that based upon her recommendation
6 and in accordance with the compensation ordinance,
7 I am approving her request.

8 Q Okay. And just so that my record is
9 -- our record is square, the first letter is dated
10 May 20, 2016, from Darlene Green to you; is that
11 correct?

12 A Yes.

13 Q All right. And is that when he was
14 promoted to Deputy Comptroller?

15 A Actually, the date I believe, sir,
16 says that his promotional date would be as of
17 May 13, 2016.

18 Q Okay. So -- so would that suggest
19 then that he was actually promoted on May 13, 2016?

20 A Yes. It would suggest that.

21 Q All right. And the request, which
22 would have been made May 20, 2016, would have meant
23 that his effective salary increase would start as
24 of his promotion date. Is that right?

25 A Yes.

1 Q All right. But all of that had to be
2 approved by you.

3 A Yes.

4 Q All right. Let's go to the next page
5 of that Frank Depo Exhibit 11 which is a letter --
6 it appears to be a letter -- well, strike that.

7 What is that page of the exhibit?

8 For the record --

9 (Overtalking - inaudible.)

10 MR. BLANKE: What page are we on?

11 MR. NORWOOD: For the record --

12 MR. SCHMITZ: You said "the next
13 page." What page are you on?

14 MS. HAMILTON: We're on 11.

15 MR. NORWOOD: The second page of
16 Exhibit 11 and the Bates stamp page number, for the
17 record, is STL000708.

18 MR. BLANKE: So you're one back.

19 MS. HAMILTON: No, you're on the
20 correct page.

21 MR. BLANKE: Oh, okay, sorry.

22 A This is my response, sir, to
23 Comptroller Green approving her request for a
24 non-standard 10 -- approximately 10 percent
25 increase for Mr. Garavaglia upon his promotion to

1 Deputy Comptroller.

2 Q (BY MR. NORWOOD) Okay. And for the
3 record, the letter is dated June 6, 2016. Is that
4 correct?

5 A Yes.

6 Q Okay. Let's read the second
7 paragraph of that letter. And before we do that,
8 it looks like it was CC'd to Terry -- who is that?
9 How do you pronounced that last name?

10 A Terry Dabrowski.

11 Q Dabrowski, okay. And who is Terry
12 Dabrowski?

13 A She was the manager of the personnel
14 services section of the Department of Personnel.
15 She's since passed away.

16 Q Okay. Second paragraph says quote,
17 (Quote as read):

18 Based on your recommendation, please
19 be advised that, in accordance with
20 Section 6(a)(1), I am hereby
21 approving your request.

22 Is that right?

23 A Yes.

24 Q And so you did approve the request;
25 right?

1 A Yes.

2 Q All right. And then it goes further
3 and says, quote, (Quote as read):

4 Therefore, upon Mr. Garavaglia's
5 appointment to the position of Deputy
6 Comptroller, in parens it has
7 (01488-21M-1).

8 **What is that number?**

9 A That number refers to his actual
10 position and pay grade, the M meaning that he is a
11 management person, the 1 meaning that he's excluded
12 from overtime provisions of the FLSA.

13 Q Okay. And continuing on, it says,
14 (Quote as read):

15 His salary shall be \$4,867 biweekly
16 (step 15), approximately 10 percent.

17 **Is that correct?**

18 A Yes.

19 Q **What is step 15? What does that**
20 **mean?**

21 A There are 30 steps in the current
22 compensation ordinance. Each step is approximately
23 1.5 percent higher than the next, and so in order
24 to make sure that the payroll office and the
25 Comptroller's office, we set a salary correctly, we

1 Q And for the record, it is a document
2 that has a heading, Acknowledgment of Retirement
3 Pension Laws, Rules, Regulations and Policies.

4 Do you see that?

5 A Yes.

6 Q What is that?

7 A This is something that's a notice
8 that is required to be signed by anyone who is
9 applying for retirement through the Employees
10 Retirement System.

11 Q Okay. And for this particular
12 document, STL001407, is that signed and
13 acknowledged by Mr. James Garavaglia?

14 A Yes, it is.

15 Q And is dated 8/30/19; is that right?

16 A Yes. That's correct.

17 Q And that's him essentially
18 acknowledging the retirement pension laws, rules,
19 regulations, and policies; is that right?

20 A Yes.

21 Q Okay. Is there a process in the
22 City, at least when you were there as director of
23 personnel, is there a process by which a person can
24 pursue a grievance if that person believes he or
25 she has been discriminated against based upon race,

1 **age, or sex?**

2 A Yes.

3 **Q What is that process?**

4 A It's covered under Administrative
5 Regulation 51, which is -- pardon me. Pardon me.
6 It's covered by -- I believe it's Administrative
7 Regulation 103 which is the policy against Title
8 VII type of -- of violations, and it instructs the
9 employee that they can either go to their diversity
10 counselor in their own department, or they can go
11 to their appointing authority, or they can come
12 directly to the employee relations section and
13 speak in confidence to, you know, a member of the
14 department personnel staff.

15 **Q Okay. And that would be a
16 confidential communication; is that right?**

17 A Yes.

18 **Q All right. Do you know if James
19 Garavaglia ever pursued any claim of discrimination
20 against Comptroller Darlene Green, or anyone else,
21 based upon race, age, or sex discrimination
22 allegations?**

23 A I'm unaware myself of any.

24 **Q Okay. And while you were there, had
25 you received anything along those lines?**

1 that she would. I don't know if she came through
2 or not, she did not speak, but I thought that -- I
3 thought I heard another name, but I'm -- I'm not
4 sure if it was Beth or Beverly or I might be
5 mistaken.

6 **Q Okay. Fair enough. Now, you indicated that -- I thought you said that in that conversation with Judy Armstrong, that she informed you -- I'm talking about the phone call. The oral phone call on a Saturday. Okay?**

11 A Yes.

12 **Q That she informed you that Mr. Garavaglia was being accused of serious fiscal issues.**

15 A Yes.

16 **Q Can you be more specific than that? What -- what -- did she identify what she was talking about?**

19 A No, she did not.

20 **Q And that was enough for you?**

21 A It was enough because she said that
22 they were serious enough that they were bringing
23 them to the attention of the state auditors.

24 **Q Let me go back, I -- I hate -- sorry about jumping around.**

1 page, this is -- on the top it says Approval of
2 Forced Leave, it's an email dated July 2, 2019,
3 same day, from you to Darlene Green with a copy to
4 Chana Morton; is that correct?

5 A Yes.

6 Q And again, you are approving the
7 request. Right?

8 A Yes.

9 Q And you say "pending his
10 pre-termination review." Is that correct?

11 A Yes.

12 Q Where -- where -- where does it say
13 that? That this is pending -- why did you add that
14 phrase, "pending his pre-termination review"?

15 A Because during this initial
16 discussion that I had with Ms. Armstrong on
17 Saturday, the Saturday before this date, they
18 indicated that the allegations against
19 Mr. Garavaglia were so serious as to warrant forced
20 leave in their opinion.

21 And I specifically inquired what
22 action, you know, they were seeking, and they
23 explained that they were -- they believed that they
24 would investigate and it may result in a
25 pre-termination review.

1 And I advised them at that point.

2 **Q And then if you look at the next two**
3 **pages, which are letters from Darlene Green to**
4 **Mr. Garavaglia, both dated, again, July 2 of 2019,**
5 **did you ever see those before? To the best of your**
6 **recollection?**

7 A The one on July 2nd. It's not
8 numbered, but --

9 **Q They're all dated July 2nd.**

10 A Yeah, this first one, no. Again,
11 that's talking about failure to, um, supervise.
12 No, that one I don't recollect having seen.

13 **Q And the next one?**

14 A Yes. That one I do. I do recollect
15 seeing.

16 **Q Now, how do you remember that? Which**
17 **is which? How do you know the one you saw and the**
18 **one you didn't see?**

19 A Because I knew nothing about the
20 specificity of the allegations involving the
21 Municipal Court during my conversation with
22 Ms. Armstrong.

23 The only thing I heard was that she
24 said that there were serious allegations of -- of
25 fiscal improprieties, and she went into no greater

1 detail than to say that it may have had something
2 to do with corrections. That's the only thing I
3 knew. So this is --

4 Q Now -- now, in this letters to Jim
5 Garavaglia, also dated July 2nd, Miss Green says
6 the same thing you said in your approval email.
7 That (Quote as read) :

8 you are being placed on official
9 forced leave, pending a
10 pre-termination hearing.
11 They say that. Right?

12 A Yes.

13 Q Both of them do. Both of these
14 versions of this notice to Mr. Garavaglia of the
15 forced leave say that. Correct?

16 A Yes.

17 Q So do you recall, when you talked to
18 Miss Armstrong on that Saturday, whether she said
19 that this was going to head up -- this was going to
20 end up as a pre-termination hearing, or anything to
21 that effect?

22 A She indicated that it could, pending
23 the investigation. That it could end up as a
24 pre-termination hearing, and we discussed what that
25 procedure entailed.

1 "improprieties" to strengthen and
2 clarify (without being too
3 restrictive)? Thanks.

4 **Q And then above that, there is an**
5 **email from Chana Morton on behalf of Darlene Green**
6 **saying, (Quote as read) :**

7 **Please see the attached updated**
8 **request.**

9 **Is that right?**

10 A Yes.

11 **Q Were there any oral conversations**
12 **between you and Chana Morton about all of these**
13 **letters, or versions?**

14 A I believe there was one conversation
15 -- two conversations that I had with Chana maybe in
16 total. One was the one on Saturday where she
17 connected the phone call, and then this one was
18 regarding me telling her, you know, that it was
19 important to include what we -- we talked about in
20 the original conversation on that Saturday before
21 July 2nd. That these were serious allegations of
22 fiscal impropriety.

23 **Q Did you have any conversations with**
24 **Darlene Green about this matter?**

25 A No.

1 know, you don't know. I'm not trying to trap you
2 or anything. I'm just asking --

3 A Well --

4 Q -- whether or not you know -- you
5 already had testified that you don't remember --

6 A Yeah.

7 Q -- seeing it or reading it, but my
8 question now is simply, do you remember or do you
9 know whether you actually received it in your
10 office?

11 A It would not have come to my
12 attention. This type of letter involving
13 employees, like fitness for duties or reports on
14 fitness for duties, or questions that had to do
15 with employees being notified of benefits,
16 regarding the benefits section, if it had to do
17 with forced leave.

18 My secretary, who's retired, Chris
19 Dussault (phonetic), would keep a file of all the
20 forced leave files. So that's just how the flow of
21 paperwork, you know, anything that I had was a
22 decision point, you know, I would get, and I
23 typically kept a personal copy even though there
24 was one in the computer system, and my secretary
25 usually had one, so.

One more question about all this.

2 A Mm-hmm.

3 Q And that is, why did you specifically
4 advise the Comptroller's office to put the words
5 "serious" and "fiscal" into their request?

6 A I think I've answered that but I'll
7 answer it again. It's because those were what the
8 original allegations were, as explained to me by
9 Judy Armstrong on that Saturday before, which she
10 said could possibly, if found true, could trigger a
11 pre-termination review.

12 Q Okay.

13 A *So, you know, that was the consistent*
14 *thing.*

15 Q And -- and there was nothing in that
16 conversation about Muni Corp; you already testified
17 to that?

18 A No.

19 Q What -- um, let's go to the July 23rd
20 letter which, is -- I lost my place.

21 A I think I --

22 Q From Paul Schmitz, sitting right next
23 to me here, Mr. Garavaglia's attorney in the Civil
24 Service Commission proceeding, to Ashley McClain.

25 MB. NORWOOD: Where is that Counsel?

1 in front of a hearing officer as soon as practical
2 because, you know, it's obviously a important issue
3 for the employee.

4 **Q (BY MR. BLANKE) Is it your ordinary**
5 **practice to discuss extensions with the person**
6 **requesting them before you grant the extension?**

7 A Sometimes.

8 **Q Sometimes yes; sometimes no?**

9 A Sometimes no.

10 **Q Okay. What -- what would -- well,**
11 **okay. Now, why did you grant the extension?**

12 A I granted the extension because of
13 the communication I had received from the
14 Comptroller before that the state auditors, you
15 know, were involved. I knew that she had planned
16 to have them involved from my original conversation
17 that I go back to on that Saturday, and the state
18 auditors were taking longer, as they often do.

19 **Q So I understand this, I just want to**
20 **be clear. Did you discuss the audit with -- with**
21 **Defendant Green -- I'm sorry, with --**

22 A No.

23 **Q -- Judy Armstrong --**

24 A No.

25 **Q -- on the Saturday afternoon con --**

1 **phone call?**

2 A No. I think what I testified to here
3 today was I discussed what the allegations were,
4 they were of a --

5 **Q Right.**

6 A -- very serious nature, and also that
7 they -- they -- I said do you think that this is
8 something that could, if crew and true, could
9 reasonably lead to, you know, termination,
10 dismissal, and Judy Armstrong said yes, you know,
11 that the auditors are also very concerned about
12 this.

13 **Q Oh, so she did mention it?**

14 A Yeah, she mentioned the -- their
15 auditors.

16 **Q In that -- in that Saturday
17 conversation?**

18 A Mm-hmm. I believe so.

19 **Q Is that the first time you learned
20 about an audit?**

21 A Mm-hmm.

22 **Q This is an internal audit?**

23 A Well, not the first time, no. The
24 City was going through a City-wide audit of all
25 those records. My department was the very first

1 one, you know, and it would take three or four
2 months -- I think it took three or four months to
3 get through just my department.

4 So it was winding its way through the
5 City and the auditors were routinely, you know,
6 going through each of the different departments and
7 were involved.

9 A Yeah, they were the auditors from
10 Jefferson City who worked, you know, directly for
11 Nicole Galloway.

12 Q Did you ever find out whether or not
13 this audit of the Comptroller's office was ever
14 completed?

15 A No, I don't. I have not read the
16 results.

17 Q Did you ever find out any results or
18 findings of that audit from any source?

19 A No.

20 Q Did you ever see any requests made to
21 the Comptroller's office from the auditors?

22 A No.

23 Q Did you see -- did you ever see any
24 documents or recorded statements of anyone in the
25 Comptroller's office made to the auditors?

1 scheduling it, et cetera.

2 And so, you know, that kind of
3 cross-communication, other than just discussion of
4 policies and procedures, would -- would be outside
5 of something we would get involved with.

6 **Q What -- what about Linda Thomas?**

7 **Would it have been improper for her to discuss**
8 **these allegations?**

9 MR. NORWOOD: Well, let me -- let me
10 object on the term "improper" because it's vague
11 and ambiguous and could call for a legal
12 conclusion.

13 **Q (BY MR. BLANKE) Well, improper for**
14 **any reason because I -- I'm just picking that up**
15 **from what you said in your answer that you thought**
16 **that it would have -- maybe you were just referring**
17 **to Ashley McClain.**

18 A I was referring to Ashley McClain and
19 myself as secretary, I wear different hats. Admin

20 **Q Right.**

21 A So while I might review a
22 pre-termination packet to make sure that it
23 complies with Admin Reg 117 fully and the tenets of
24 due process, you know, I'm not looking to see if
25 they've proved up the charges or et cetera. That's

1 my role as director of personnel.

2 As secretary, I'm just making sure
3 that other kinds of things, you know, under the
4 Commissions purview are proper, et cetera, and
5 that's Ashley's role.

6 Linda Thomas, you know, would have
7 been, you know, capable of speaking to, you know,
8 any employee about -- or I'm sorry, any appointing
9 authority about, you know, disciplinary issues, but
10 I think I've already stated that, based on a recent
11 conversation I had with Miss Thomas, she explained
12 to me that the only conversation she had in this
13 whole business was answering the Comptroller's
14 initial questions about Administrative Regulation
15 117, and she really had no interest in getting
16 involved with it, quite frankly.

17 **Q Okay. How does that scheduled**
18 **hearing of 29th, how does it actually get canceled?**
19 **Is it just -- does it automatically get canceled?**
20 **Or does the Commission cancel it? Or does Ashley**
21 **cancel it?**

22 A Not the Commission. Ashley would
23 cancel it.

24 **Q She cancels it herself?**

25 A Yes. And she would do that, sir, in

1 wasn't sure if it was completed and they just
2 hadn't issued it yet, or if, you know, they were
3 still looking into it. I mean, this has been
4 months ago, so.

5 **Q And -- and you wouldn't have any**
6 **personal knowledge as to whether -- which of those**
7 **two things it might be?**

8 A No, I would not.

9 **Q Do you remember anything else?**
10 **Anything more specific. About the audit.**

11 A No, not about the audit at all. I
12 remember mine. I was really happy with that, but
13 other than that, no.

14 **Q Well, do you have anything -- was**
15 **there anything else specifically that you recall**
16 **that was discussed besides what you just said?**

17 A No, I think that just the other thing
18 I, and just in an abundance of transparency, I
19 never had a conversation about the -- the case or
20 the allegations or anything, but the only other
21 person I talked to was Chana when she would say the
22 Comptroller's on the phone, you know.

23 **Q Well --**

24 A That -- that's it.

25 **Q Sticking with this conversation with**

1 **Green, though, in 2021, did you -- did she discuss**
2 **anything with you specifically with regard to what**
3 **she was worried about with regard to the audit?**

4 A No. As a matter of fact, just to
5 amplify on that, I didn't even know that -- that
6 municipal courts was involved. I stated I thought
7 it was something to do with corrections, but --

8 **Q What does that mean?**

9 A Pardon?

10 **Q What do you mean, corrections? What**
11 **does that mean?**

12 A The correctional division, I thought
13 there might have been some concerns about the
14 correctional division, but --

15 **Q She said that, or you just thought**
16 **that?**

17 A No, I -- I might have thought that --
18 I might have been mistaken because I was also
19 called -- called as an expert witness in some -- by
20 a different firm about some issues with
21 corrections, so it just may -- may have -- may have
22 been, you know, my memory.

23 I thought that during the initial
24 conversation, though, that Judy Armstrong had --
25 had mentioned that as a particular department but

1 I believe that would be a Monday. It was a Monday.

2 Q Whether it was a Monday or a

3 Tuesday --

4 A It was --

5 Q -- the Saturday before that is when
6 you would have had the conversation.

7 A Yes. That, I recall.

8 Q All right. And do you know what
9 additional information was unearthed between the
10 time you had the discussion with them the Saturday
11 before the first forced leave and the time when the
12 pre-termination notice was actually issued in
13 August?

14 A In August? No.

15 Q I mean, so in other words, you don't
16 know what was being unearthed during this
17 investigative process; is that a fair statement?

18 A Very fair.

19 Q All right. And is it common for
20 appointing authorities to provide you with that
21 kind of detail in order to get you to approve or
22 sign off on a forced leave?

23 A No, they generally just talk to me
24 about what type of general behavior, like bullying,
25 harassment, refusal -- I mean refusal to test for

1 drugs, alcohol, drug alcohol failure.

2 As a matter of fact those are even
3 delegated to my employee relations manager. So
4 they typically just will give me an outline that
5 there was serious harassment at work, or
6 falsification of records, things like that.

7 **Q But not the details about the
8 specifics, allegations, or anything of that sort?**

9 A No. The details are required in the
10 pre-disciplinary review notice or the
11 pre-termination hearing -- or not hearing,
12 pre-termination review notice. That's when, under
13 our rules and under our perception of -- of due
14 process, that you need to give the person ample
15 time to review and -- and really list through those
16 specifics.

17 **Q Okay. Do you know if the
18 Comptroller's office prepared different drafts of
19 communications before they were either sent out
20 to you or before they may have been sent out to
21 Mr. Garavaglia? Do you know that?**

22 A I had no personal knowledge of that
23 until when I saw the different letters today.

24 **Q Okay. So -- so that's something you
25 wouldn't have been privy to in terms of --**